

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
333 Queen Street, Suite 300
Honolulu, Hawaii 96813

December 8, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

**REQUEST FOR APPROVAL TO CONDUCT A PUBLIC HEARING REGARDING DRAFT
RULE CHANGES TO §13-256-63 AND A PER-USER FEE FOR COMMERCIAL USE OF
ZONE "C" OF THE SHARK'S COVE/THREE TABLES/WAIMEA BAY MARINE LIFE
CONSERVATION DISTRICT (MLCD) ON OAHU.**

PURPOSE:

To gather comments from the general public and commercial tour operators about proposed draft rule changes to §13-256-63 which are needed to clarify operational procedures, and an assessment of a per user fee for commercial snorkeling and SCUBA operations using the waters of Shark's Cove on Oahu.

LEGAL REFERENCE:

Section 13-256-63 of the Hawaii Revised Statutes as amended.

BACKGROUND

An amendment to Hawaii Administrative Rule 13-256-63, which took effect in 2002, allows DLNR to regulate the commercial use of Shark's Cove and provides a framework for developing a permit system for this sub zone of the North Shore Oahu Ocean Recreation Management Area.

The Division of Boating and Ocean Recreation took the first step in implementing HAR 13-256-63, as amended, earlier this year, enforcing a mandatory seasonal closure beginning November 1 and running through March 31 of the following year and during this same period each year thereafter.

As a second step in the implementation process, DOBOR is seeking public comment on proposed rule changes that are needed to clarify and streamline the permitting and reservation procedure. A draft of the proposed changes follows in this section. Issues to be resolved via the rule change include:

- the number of permits a single commercial operator may purchase for a single

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- day during the open season
- the number of individuals covered by a single use permit
- repeal of the annual, monthly, weekly and daily use permit fees
- the hours of prohibited use at Shark's Cove.

PROPOSED AMENDMENTS

§13-256-63 Sharks Cove. Three Tables and Waimea Bay ocean waters.

(j) A maximum of six use permits, with a combination of commercial activity permittees and customers not to exceed ten individuals, including instructors and assistants per use permit, shall be issued for any one of three time periods and the permittee shall only be allowed to use Zone 'C' during the periods reserved by the permittee via a reservation system established by the department. Commercial operators will be allowed to reserve one use permit per day during the open season and will pay a fee of \$5.00 per individual up to a maximum of 10 individuals covered under each permit, when making reservations.

~~(k) Use permit fees, that shall be paid in full at the time of the reservation for use periods, shall be as follows:~~

- ~~(1) A seasonal user fee of \$420 or~~
- ~~(2) A monthly user fee of \$75; or~~
- ~~(3) A weekly user fee of \$56; or~~
- ~~(4) A daily user fee of \$10.~~

~~(l) Individuals who possess a commercial activity permit and pay fees in accordance with section 13-234-25, shall be exempt from the fee requirements provided in subsection (k) but shall be required to make reservations as described in subsection (j).~~

(mk) Commercial activities may be allowed from April 1st through October 31st of each year, from 8:00 a.m. to 9:00 p.m., but shall be prohibited between the hours of 9:00 p.m. to 8:00 a.m. and from November 1st through March 31st of each year. at all other times.

[Eff _____] Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200 4, 200-10, 200-22, 200-24).

New material is underlined. Material to be stricken is bracketed and stricken.

DOBOR is concurrently developing an RFP for an on-line system to handle permit reservations for this resource. The per-user fees being sought by DOBOR would be used to defray the cost of developing and maintaining the on-line reservation system.

If approved by the Board, DOBOR will conduct its public hearing, inviting commercial operators and special interest groups to comment on the proposed rule changes. The division will present its findings and make a recommendation to the Board. With proper

authority to clarify its rules and to charge the per head fee, DOBOR would be able to finalize and launch the (on-line) reservation system and permitting process for Shark's Cove as outlined in §13-256-63 HAR.

RECOMMENDATION:

That the Board:

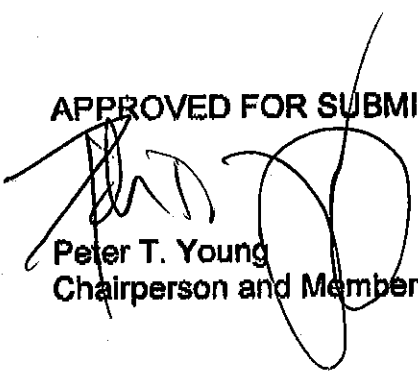
1. Grant approval to conduct a public hearing on Oahu regarding draft changes to §13-256-63 HAR and a per-user fee for commercial users of Shark's Cove.
2. Affirm to the Department to schedule this public hearing on this rule amendment as expeditiously as possible following the Governor's approval to conduct a public hearing.
3. Authorize the Chairperson to appoint a hearing master to conduct a public hearing to receive written and verbal testimony concerning the proposed amendments to the Hawaii Administrative Rules.

Respectfully submitted,



Ed Underwood
Administrator

APPROVED FOR SUBMITTAL



Peter T. Young
Chairperson and Member